IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
THURSDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY
WRIT PETITION NO : 12755 of 1994

Between:

1 K.Anjaiah, S/o. late K.Babaiah, 43 years,
R/o. H.No.9-2-217,Langar House, Hyderabad.
2 K.Yadaiah, S/o. late K.Babaiah, 47 years,
R/o. H.No.9-2-217,Langar House, Hyderabad.
3 K.Krishna, S/o. late K.Advaiah, 39 years,
R/o. H.No.9-2-217,Langar House, Hyderabad.
4 K.Venkatesh, S/o. late Advaiah., 29 years,
R/o. H.No.9-2-217,Langar House, Hyderabad.
5 K.Ramesh, S/o. late K.Advaiah, 27 years,
R/o. H.No.9-2-217,Langar House, Hyderabad.
6 K.Ashok, S/o. late K.Advaiah, 25 years,
R/o. H.No.9-2-217,Langar House, Hyderabad.
7 K.Kumar, S/o. late K.Advaiah, 19 years,
R/o. H.No.9-2-217,Langar House, Hyderabad.
8 K.Swarupa, D/o. late K.Advaiah, 19 years,
R/o. H.No.9-2-217,Langar House, Hyderabad.

..... PETITIONERS

AND

1 The Govt. of A.P. rep.by it's Principal Secretary,
Revenue department(U.C.I.),Secretariat Buildings, Hyderabad.
2 Commissioner Land Reforms/Urban Land ceilings,A.P. , Office of Board of Revenue, Nampally Station Road, Hyderabad.
3 Special Officer & Competent Authority, Urban Land Cellings,Chandra Vihar,
Mojamjahi Road,Hyd.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ or order or direction more particularly one in the nature of Certiorari quashing the final order passed by the 3rd respondent in declaration case No.B1/9869/76

DT.23-6-1990 as well as the Order dt.23.4.1994 passed by the 2nd respondent in Appeal case No.CLR & ULC HYD/115/93 by calling for the records of the 2nd & 3rd Respondents direction as Hon'ble Court may deem proper and in the circumstances of the case.

Counsel for the Petitioner: MR.A.ANANTHA REDDY

Counsel for the Respondent No.: GP FOR ASSIGNMENT

The Court Made the Following :

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ORDER:

The writ petitioners No.1 and 2 are the sons of one late Kolla Babaiah, who filed declaration in Form - I under Section 6(1) of the Urban Land Ceiling Act 33 of 1976, (for short 'the Act'). That after due verification, draft statement under Section 8(1) together with notice under Section 8(3) of the Act was issued on 22-09-1988, determining provisionally that the declarant, Babaiah, holds a total extent of 11,942-71 square meters and he was entitled to retain an extent of 1,000 Square meters alone and he was provisionally declared as surplus land holder for an extent of 10,942-71 Square meters. It is an admitted fact that the draft statement under Section 8(1) together with interest under Section 8(3) of the Act sent under registered post with acknowledgement due was returned unserved. The order was served and affixed on the known address by the enquiry officer. Since there were no objections filed by the declarant-Babaiah within the statutory period of thirty days, the Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad, having come to the conclusion that there were no objections to offer by the declarant, accordingly issued final statement under Section 9 of the Act by an order dated 23-06-1990.

Aggrieved by the said order, the petitioners 1 and 2 being the sons of late K. Babaiah who filed the declaration together with the writ petitioners 3 to 8, who are the sons and daughter of late K. Advaiah, the brother of deceased declarant K. Babaiah, preferred appeal under Section 33 of the Urban Land (Ceiling & Regulation) Act, 1976, (for short 'the Act') challenging the order of the Special Officer and Competent Authority on various grounds. It was *inter alia* contended that the order has been passed by the Special Officer and Competent Authority without following the minimum mandatory provisions contemplated under Section 8(3) of the Act and passed orders even without bringing the legal representatives of the declarant who died in the year 1977. The order was passed against the dead person. It was specifically contended that the declarant, Babaiah, during his life time, and thereafter, the petitioners have not received any communication whatsoever till the impugned order passed by the Special Officer and Competent Authority on 23-06-1990. That having found that the impugned proceedings were affixed in the first week of May, 1993, on the neighbours house, the appellants having realized that the impugned order was passed against the deceased-Babaiah, preferred the appeal.

The Commissioner held that it was the duty and obligation of the land holders to declare their holdings after the death of the original declarant and since they did not file any such declaration and in view of the failure on the part of the petitioners to come on record, did not interfere with the order passed by the Special Officer and Competent Authority.

The view taken by the Commissioner suffers from incurable

legal infirmities. There is no dispute whatsoever that the declarant-Babaiah was died in the year 1977 itself. There is nothing on record suggesting that any notice as such were served upon Babaiah during his life time after his filing declaration. There is also no material available on record to satisfy this Court that whether any notices were issued and served upon the petitioners. There is nothing on record suggesting that the proceedings, dated 22-09-1988, under Sections 8(1) and 8(3) of the Act were served upon the writ petitioners. In such view of the matter, I have no hesitation to hold that the final orders passed against the dead person are nullity and that the valuable rights of the petitioners were infringed requiring proper adjudication after putting the petitioners on notice.

That apart, the learned Counsel for the petitioner in supported of the submission that the provisions of the Act are not at all applicable, and therefore, the land in question cannot be declared as surplus, submitted the certificate issued by Hyderabad Urban Development Authority(for short 'HUDA'), dated 02-09-2003, in which it is *inter alia* stated that the land in Survey No.183 and 184 of Langer House village is covered by statutory Zonal Development Plan of Zone No.VI for the municipal area of the Hyderabad Development area, according to which the land under reference is earmarked for water bodies (Tank). On the strength of the certificate, learned counsel for the petitioner contended that the provisions of the Act are not applicable since the land cannot be treated as vacant land within the meaning of the provisions of the Act.

I do not propose to express any opinion on this question. It shall be open to the petitioners to file the said document before the

Special Officer and Competent Authority and file all the objections which shall be duly taken into consideration by the Special Officer and Competent Authority.

In the circumstances, the order passed by the Special Officer and Competent Authority, dated 23-06-1990, as confirmed by the Commissioner Land Reforms/Urban Land Ceilings, Hyderabad, in Appeal case No. UC 115 of 1993, are accordingly set aside. The matter is remitted for fresh consideration by the Special Officer and Competent Authority in accordance with law, after putting the petitioners on notice.

That the observations, if any, made in this order shall have no bearing on the determination of the issuance made by the Special officer and Competent Authority.

The Writ Petition is accordingly allowed to the extent indicated. No order as to costs.

24-06-2004.

PV/ MJL

That Rule Nisi has been absolute as above witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the Twenty Fourth day of June, Two Thousand and Four.

ASSISTANT REGISTER

//TRUE COPY //

SECTION OFFICER

To

1 The Principal Secretary, Govt. of A.P.
Revenue department(U.C.I.),Secretariat Buildings, Hyderabad.
2 Commissioner Land Reforms/Urban Land ceilings,A.P. , Office of Board of Revenue, Nampally Station Road, Hyderabad.
3 Special Officer & Competent Authority, Urban Land Cellings,Chandra Vihar,
Mojamjahi Road,Hyd.

4. 2 CCs to the G.P. for Assignments, High Court of A.P. Hyderabad (OUT)
5. 2 CD copies.